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New Anti-Corruption Governments:
The Challenge of Delivery
Nairobi, 12 - 13 October 2004

TOPICAL WORKING GROUPS ON PROCESSES OF REFORM RECOMMENDATIONS

Working Group 1: Tackling Government Procurement

Chair: Juanita Olaya - TI- Colombia

Recommendations and Lessons Learnt

Arising from the discussions, the following recommendations were made:

1. There is need for new ant-corruption governments to provide a roadmap to the citizenry on the procurement reform process so that citizens are aware of and can engage in the process of reform and also support it.
2. After provision of the roadmap, it is crucial to ensure that there is public participation in the procurement process, the government needs to articulate what they want to do, disseminate this information to the public, have a system of collecting their feedback on the proposals and let them have access to the final document detailing the reforms.
3. Mechanisms for transparency and public disclosure of information on procurement need to be put in place. Disclosure is necessary for purposes of building public confidence and support for the procurement process and its reform. Such disclosure should be on issues like procurement contracts awarded, persons to whom the awards have been made, the sums involved and what citizens can do with information given and any information they have on the procurement process. In Nigeria for example a Minister in charge of local government published information on money given to local authorized and asked citizens to follow up on the amounts. In Mexico, the government has a website with information on procurement. Even bids are done online and all the information is available to the public.
4. New governments should deal with administrative changes in public procurement that they intend to make very quickly as this will give the public confidence on the intention of the new leadership even as the government still pursues legal and institutional changes.
5. Governments should be strategic in their reform process and not just do things in

6. There is need to involve all the players in dialogue sessions so as to agree on and understand the outcome of public procurement reform and its benefit for the people. This will also enable agreement amongst the players on essential reforms.
7. The period before and after elections is normally a critical window of corruption in procurement processes. A new government must deal with this period carefully. The balance to be struck is between not allowing past corruption to go on and taint the new government on the one hand, and ensuring continuity in government services. A suggestion of dealing with this issue is for the new government to look critically at contracts signed a few months before an election and forming a committee to verify such contracts. After elections, a critical look should be taken of critical sectors for procurement corruption like big construction and military contracts and either put a hold on the pending establishment of oversight mechanisms or ensure very strict compliance with the rules.
8. There is need for innovative approaches to reforms. Such innovative approaches should, however not be used to disadvantage small and medium company interests. The innovative approaches could include
 - Putting in place a system of incentives and punishment. This could take the form of blacklisting, listing tender defaulters or having, like in Nigeria a white list prepared in conjunction with the private sector of those who comply with procurement requirements
 - Developing in consultation with stakeholders a code of conduct to ensure ethical behavior and agreeing on a system of compliance and its enforcement
9. It is important that debate on public procurement and anti-corruption shifts from a technical process and debate about rules to one about service delivery so that procurement reforms and anti-corruption efforts is seen as a means to removing obstacles to service delivery to citizens and not an end in themselves.
10. Procurement reform should be dealt with in a broad policy framework so that reform is sustainable and holistic
11. In this vein, reform in procurement should be linked to other processes like reform to ensure access to information, reform in rules governing private financing of political parties and establishment of a code of conduct not just for the civil service but for all players in the procurement industry
12. Above all, reform should be undertaken in the broad framework of ensuring good governance and improving livelihood of citizens.

Working Group 2: Addressing Election and Party Finance

Chair: Ognyan Minchev- TI Bulgaria

Recommendations and Best Practices

1) *Constitutional and Legal Framework*

There is need to enact a comprehensive constitutional and legal framework for effective regulation of political parties and the electoral process. The right of citizens to participate in the electoral process and definition of political parties should be entrenched in the constitution. Enabling statutory provisions should also be enacted. Among the proposed laws included; Electoral Act; Political Parties Act and Political Parties Financing Act.

2) *Political Party Financing*

States must consider providing funding for political parties to facilitate their effective participation in the electoral and political process. An appropriate formula taking into consideration proportional and equitable criteria for allocation should be examined. Private contribution is also required to complement public funds. However, effective regulation and limits should be introduced on private donations.

3) *Enforcement and Adjudication*

Introduction of independent constitutional bodies among them the electoral commission is key to the success and management of party funds and the regulation of political parties. Clear separation of roles is also required to avoid overlaps and duplication. Electoral courts should arbitrate over criminal electoral offences, while the role of supervising political parties and the management of funds should be left to the electoral commission.

4) *Enabling Political Environment*

The success of any reform depends largely on the enabling political environment and political goodwill on the part of leaders and key players. There is a need for the establishment of a better political system, responsive constitution, and legitimate multi party systems.

5) *Citizen Participation, Civil Society involvement.*

The experience of Mexico, Korea and Peru, demonstrated the fact that citizen participation and involvement to the reforms process is key. There is therefore need for effective mobilization of the citizens to gain public support of the process.

6) *Media*

State media should provide proportional access to all competing parties. Often the ruling party unfairly benefits from the state media at the expense of opposition parties. Access to private media should be at the cost of public media and the state should consider providing tax concession to private media in order to subsidize coverage for parties during elections.

and the Military)

Chair: Eduardo Bohorquez- TI Mexico

Recommendations and Best Practices

(1) *Principles for judicial reform:*

The workshop revisited through the presentation, the principles that are crucial in the fight for corruption. Transparency (ex. Publishing judgments, appointments and process of appointments, salaries, distribution of judges, access to court); impartiality; independence; respect for human rights, and financial independence

(2) A critical issue to be considered is the immunity of judges

(3) *Principles for police reform*

- a. Competent, well educated and trained
- b. Independent institutions for control
- c. Effective complaint system
- d. Capacity to deal with Human Rights
- e. Clear procedures
- f. Suspend officials upon suspicion
- g. Rapid transfer (within the police) to avoid building of empires
- h. Cultivate leadership of integrity within police
- i. Adequate equipment
- j. Need to establish independent supervisory mechanism for police

With regard to the above, it was concluded that the police should be an earlier priority for reform than the judiciary. This is due to public opinion that indicates that the police are the most corrupt.

A critical question was who should supervise/control the police? Two ideas floated were 'centralization vs. decentralization'. The fear was whether this would decentralize corruption.

(4) *Principles for military reform*

- a. Under the authority of a democratic regime
- b. Control in military procurement and expenditure
- c. Avoid having military courts in peace times
- d. Professionalism
- e. De-politicization

(5) *Strategy for reform*

- a. Political will is key both within the judiciary and the executive
- b. Capitalize on a crisis by starting reform
- c. Do it well because you won't get a second chance (seize window of opportunity)
- d. Need for strategic approach to sequencing: priority: supreme court first!!
- e. Holistic approach for justice reform (include police, prosecutor etc.)

- f. Consider crucial role of media in order to investigate corruption cases
- g. Civil society as an oversight body in providing momentum for reform
- h. Don't forget the most obvious players (parliament etc.)
- i. Focus of quick wins and symbolic action:
 - i. Remuneration
 - ii. Generating trust by involving civil society
 - iii. Effective complaint system
 - iv. Firm administrative action against reasonably suspected corrupt officials

Caveats

- 1 When planning for quick wins, governments should bear in mind the unintended consequences of actions taken, resources required and public expectations that are raised
- 2 Government should avoid making big announcements before taking action.

Working Group 4: Building Integrity in Government Institutions 2 (Tax, Customs, Budgeting and Audit)

Chair: David Ndii- Kenya Leadership Institute

Recommendations and Lessons Learnt

1. The primacy of proactive leadership from the top i.e. the chief executive is paramount in the fight against corruption in all sectors and in particular in the revenue management sectors that are sensitive by nature. South Korea and Nigeria were cited as good examples of leadership by example as the respective president have taken a proactive and hands on approach to fighting corruption.
2. Mobilizing public support to help in bringing transparency and accountability in the revenues collection, expenditure and generally management vital.
3. The success of mobilizing public support depends on factors such as:
 - 1 Accessible and simplified budget information to enhance public participation
 - 2 Public support requires the government to demonstrate the dividends that arise from reform. Governments that show people benefits from reform can Marshall the public supports necessary to steer the anti-corruption path that is risky at times but needed nevertheless. In the regard Georgia was cited as an exception because public support was sustained because savings from reduced corruption benefited people who had taken three years without pension and wages.
 - 3 Value for Money: reform is needed on the expenditure side of public finances. It was noted most governments concentrated on the revenue

raising reforms measures and neglected the expenditure aspect. For a government to gain public

4. Counter reform has been emphasized as an impediment by representatives of the countries represented in the discussion except Georgia. Georgia demonstrates that counter reform can be neutralized by explicit political support and goodwill from the chief executive and public support

5. Reform champions are needed in the fight against corruption. However, it was cautioned that isolated individual efforts while useful may also be risky and not sustainable. A case for a reformist tax administrator who was forced to resign for her reform activism was cited as an example. It was recommended that champions of the reform movement require a critical mass to sustain reform efforts and pressure.

Working Group 5: Prosecution of Crimes and Recovery of Assets

Chair: Jose Ugaz-Peru

Lessons Learnt and Conclusions:

- 1 The challenge with delivery is to be proactive, persistent and to come up with appeals to international mutual assistance to shorten processes. Currently, international mutual assistance is laborious, bureaucratic and very slow.
- 2 Establishing functional financial asset tracing and forensic units is integral to expertise building, sharing banking information, and adequate legislative cover.
- 3 Civil society should be involved with the national processes and international initiatives. Their advocacy should 'socialize' anti-corruption so that it is not an expert or police issue. They should monitor how recovered assets are used.
- 4 Resistance to anti-corruption efforts benefits from legal loopholes and a sympathetic judiciary that has been part of a corrupt system. Judicial reform is integral to the success of any initiatives.
- 5 There is a dichotomy during implementation and apparent conflict between asset recovery and criminal justice. While perceptions on amnesties are against them, prosecuting and securing convictions against culprits may not guarantee results. Alternatives to prosecuting should be considered, for instance civil action, without rewarding impunity.

Recommendations:

1. Asset recovery and prosecution should be pragmatic according to the circumstances. The essential principle must be not to reward impunity. Plea-bargaining to arrive at judicial settlements and civil action should be utilized.
2. Judicial reform must be implemented.
3. Forensic investigative, intelligence and asset recovery units should be established.

4. Criteria regarding tax policy should be harmonized with the possibility of removing differences in standards dealing with tax cheating between different states.
5. Countries receiving suspicious money deposits should notify authorities in the countries of origin.
6. International advocacy should consider developing a toolkit for preparedness dealing with basic legislative and policy measures to be put in place and adopted by new regimes in order to recover assets.